

Application No.: 10/599,722
Filing Date: September 19, 2008

REMARKS

With this Amendment, Claims 15-44 are pending in the present application, wherein Claims 25-44 are new claims and Claims 1-8 and 11-14 have been canceled without prejudice or disclaimer. Applicants reserve the right to pursue the canceled claims or the original unamended claims at a later date.

Specification amendments

The Office Action objected to paragraphs [0035], [0057], [0068], [0093], [0099], [0120], [0125], and [0138]. Applicants have amended these paragraphs as recited above. Applicants respectfully submit that no new matter is being introduced by way of this amendment

Claim amendments

Applicants have amended Claims 15 and 20 without prejudice or disclaimer.

Objections under 35 U.S.C. § 112, ¶ 6

The Office Action noted that Claims 1-8 and 11-14 do not invoke 35 U.S.C. § 112, ¶ 6. Applicants have cancelled Claims 1-8 and 11-14. Accordingly, this objection is now moot.

Claim rejections under 35 U.S.C. § 112, ¶ 2

The Office Action rejected Claims 1-8 and 11-14 under 35 U.S.C. § 112, ¶ 2. Applicants have cancelled Claims 1-8 and 11-14. Accordingly, this rejection is now moot.

The Office Action also rejected Claims 1, 15, and 20 under 35 U.S.C. § 112, ¶ 2 on the grounds that the use of the term “relatively” allegedly renders the claims indefinite. Applicants have cancelled Claim 1 and amended Claims 15 and 20 to remove the term “relatively.” Accordingly, withdrawal of these rejections is respectfully requested.

The Office Action also rejected Claim 3 under 35 U.S.C. § 112, ¶ 2. Applicants have cancelled Claim 3. Accordingly, this rejection is now moot.

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Claim rejections under 35 U.S.C. § 102

The Office Action rejected Claims 1-4, 6, 7, 11-16, 18, and 19 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,824,533, issued to Risk, Jr. et al., (“Risk”). Applicants have cancelled Claims 1-4, 6, 7, and 11-14 and amended Claim 15.

Applicants respectfully traverse this rejection because the Office Action fails to establish that Risk identically teaches every element of Claim 15 as amended. For example, the Office Action fails to demonstrate that Risk teaches “wherein fluid is moved through the fluid flow path to provide simultaneous aspiration and irrigation to the wound; and wherein fluid moving through the fluid flow path is regulated to hold negative pressure on the wound at a steady level while providing simultaneous aspiration and irrigation to the wound.” Rather, as the Office Action recognizes, Risk “teaches that the aspiration and irrigation are done alternately.” Office Action, at p. 13.

Furthermore, because Claims 16, 18, and 19 depend from Claim 15, Applicants submit that these claims are likewise allowable over the cited prior art, not only because they depend from an allowable base claim, but also because these claims recite a unique combination of features not disclosed, taught, or suggested by the cited art. Accordingly, withdrawal of these rejections is respectfully requested.

Claim rejections under 35 U.S.C. § 103

The Office Action rejected Claims 5, 8, and 20-24 under 35 U.S.C. § 103(a) as being unpatentable over Risk in view of U.S. Patent No. 6,752,794, issued to Lockwood et al., (“Lockwood”). Applicants have cancelled Claims 5 and 8 and amended Claim 20. Applicants respectfully traverse this rejection for the following reasons.

At col. 6, lines 45-67, Risk teaches monitoring and controlling negative pressure that is present through a canister by operating a proportional valve based on comparing the level of negative pressure present through the canister, as measured by a transducer, with the caregiver-defined level. However, the Office Action fails to demonstrate where Risk, alone or in combination with Lockwood, discloses or suggests, for example, the following limitations of amended Claim 20: “a pressure monitor configured to monitor negative pressure under the backing layer” or “wherein, based on the monitored negative pressure, the regulator is configured

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to hold negative pressure on the wound at a steady level while simultaneous aspiration and irrigation is provided to the wound.”

Furthermore, because Claims 21-24 depend from Claim 20, Applicants submit that these claims are likewise allowable over the cited prior art, not only because they depend from an allowable base claim, but also because these claims recite a unique combination of features not disclosed, taught, or suggested by the cited art. Accordingly, withdrawal of these rejections is respectfully requested.

The Office Action also rejected Claim 17 under 35 U.S.C. § 103(a) as being unpatentable over Risk in view of U.S. Patent No. 5,030,202, issued to Harris, (“Harris”). Applicants respectfully traverse this rejection because, as explained above, the Office Action fails to establish that Risk identically teaches every element of amended Claim 15, from which Claim 17 depends. Applicants further submit that Claim 17 is allowable not only because it depends from an allowable base claim, but also because it recites a unique combination of features not disclosed, taught, or suggested by the cited art. Accordingly, withdrawal of this rejection is respectfully requested.

New claims

Applicants have added Claims 25-44. No new matter is believed to be added. Applicants submit that Claims 25-44 are allowable over the cited prior art for the following reasons.

With respect to Claims 25-31, Applicants submit that these claims are allowable over the cited prior art, not only because they depend from an allowable Claim 20, but also because these claims recite a unique combination of features not disclosed, taught, or suggested by the cited art.

With respect to Claims 32-37, Applicants submit that these claims are allowable over the cited prior art, not only because they depend from an allowable Claim 15, but also because these claims recite a unique combination of features not disclosed, taught, or suggested by the cited art.

With respect to Claim 38, Applicants submit that the Office Action fails to demonstrate that Risk, alone or in combination with cited prior art, teaches or suggests, for example, “a pressure monitor configured to monitor negative pressure under the backing layer” or “wherein the regulator is further configured to hold negative pressure on the wound at a steady level while simultaneous aspiration and irrigation is provided to the wound.” Claims 39-41 are likewise

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allowable over the cited prior art, not only because they depend from an allowable Claim 38, but also because these claims recite a unique combination of features not disclosed, taught, or suggested by the cited art.

With respect to Claim 42, Applicants submit that the Office Action fails to demonstrate that Risk, alone or in combination with cited prior art, teaches or suggests, for example, “a pressure monitor configured to monitor negative pressure under the backing layer” or “wherein, based on the monitored negative pressure, the regulator is configured to hold negative pressure on the wound at a steady level while simultaneous aspiration and irrigation is provided to the wound.” Claims 43-44 are likewise allowable over the cited prior art, not only because they depend from an allowable Claim 42, but also because these claims recite a unique combination of features not disclosed, taught, or suggested by the cited art.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Co-Pending Applications of Assignee

Applicants wish to draw the Examiner's attention to the following applications of the present application's assignee.

Docket No.	Serial No.	Title	Filed
SMNPH.002C1	12/416,829	APPARATUS FOR ASPIRATING, IRRIGATING AND CLEANSING WOUNDS	04/01/09

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SMNPH.002C1C1	12/981,337	APPARATUS FOR ASPIRATING, IRRIGATING AND CLEANSING WOUNDS	12/29/10
SMNPH.003APC	10/576,263	WOUND CLEANSING APPARATUS WITH ACTIVES	11/09/06
SMNPH.003P1	12/976,935	APPARATUS AND METHOD FOR WOUND CLEANSING WITH ACTIVES	12/22/10
SMNPH.004C1	12/832,032	WOUND CLEANSING APPARATUS WITH HEAT	07/07/10
SMNPH.005APC	10/575,871	WOUND CLEANSING APPARATUS IN- SITU	01/29/07
SMNPH.005C1	12/848,817	WOUND CLEANSING APPARATUS IN- SITU	08/02/10
SMNPH.005C2	12/940,788	WOUND CLEANSING APPARATUS IN- SITU	11/05/10
SMNPH.006C1	12/762,250	WOUND CLEANSING APPARATUS WITH SCAFFOLD	04/16/10
SMNPH.007C1DV1	12/832,002	WOUND CLEANSING APPARATUS WITH STRESS	07/07/10
SMNPH.008P1	12/976,949	WOUND TREATMENT APPARATUS AND METHOD	12/22/10
SMNPH.009APC	10/599,725	APPARATUS FOR CLEANSING WOUNDS WITH MEANS FOR SUPPLY OF THERMAL ENERGY TO THE THERAPY FLUID	09/22/08
SMNPH.010APC	10/599,728	APPARATUS FOR ASPIRATING, IRRIGATING AND/OR CLEANSING OF WOUNDS	11/03/08
SMNPH.011APC	11/577,642	SIMULTANEOUS ASPIRATE & IRRIGATE & SCAFFOLD	08/23/07
SMNPH.014APC	11/577,642	SIMULTANEOUS ASPIRATE & IRRIGATE & SCAFFOLD	08/23/07
SMNPH.015APC	11/919,369	WOUND TREATMENT APPARATUS AND METHOD	11/17/08
SMNPH.016APC	11/919,354	WOUND TREATMENT APPARATUS AND METHOD	11/19/08
SMNPH.017APC	12/066,578	APPARATUS WITH ACTIVES FROM TISSUE	10/10/08
SMNPH.018APC	12/066,730	APPARATUS WITH ACTIVES FROM TISSUE	10/09/08
SMNPH.019APC	12/066,585	APPARATUS	09/29/08

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Applicants direct the Examiner to these applications to consider whether the subject matter claimed, now or as may be amended in the future, as well as the associated prosecution history, now or in the future, may be relevant to the patentability of the present application (e.g., for reasons of double patenting). Applicants believe that the Examiner has access to the applications and associated file histories through the Patent Office (e.g., the IFW system). Accordingly, Applicants have not provided copies of these applications or their associated file histories. Applicants would be happy to provide copies of any of these applications or their associated file histories, now or in the future, should the Examiner so request.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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